

REMARKS

Claim 21 is added. Claims 1, 12, 19 and 20 are presently canceled without prejudice. Accordingly, claims 2-11, 13-18 and 21 are presently pending.

Claims 1-3, 5, 6 and 8 stand rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 4,267,196 to Johnston. As mentioned above, claim 1 is canceled. Claims 2 and 8 have been amended to incorporate the limitations of claim 1. It is respectfully submitted that claims 2, 3, 5, 6 and 8 are not anticipated by Johnston.

With respect to claim 2, and by dependency claims 3, 5 and 6, Johnston does not disclose the claimed step of adding a liquid to the at least one beverage ingredient prior to the step of pureeing the at least one beverage ingredient into an ingredient puree. Instead, Johnston merely discloses adding a diluting agent "to each, all, or any combination of the comminution, digestion, neutralization, and homogenization states." (Col. 4, ll. 64-68.)

With respect to claim 8, Johnston does not disclose the claimed step of freeze drying the ingredient puree into a dried ingredient puree by vacuum drying the dried ingredient puree. Instead, Johnston merely discloses freeze drying and makes no mention of vacuum drying.

Claims 1-18 and 20 stand rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 4,267,196 to Johnston in view of U.S. Patent No. 6,098,410 to Horigane. As mentioned above, claims 1, 12, 19 and 20 are canceled. It is respectfully submitted that claims 2-11 and 13-18 are not unpatentable over Johnston in view of Horigane.

Claim 11, and by dependency claims 13-18, has been amended to include the limitation of now-canceled claim 12. The Office action, p. 4, relies upon Horigane for the step of comparing the actual color of the beverage powder to the target color. This step is not alleged in the Office action to be disclosed in Johnston. Claim 11, as presently recited, requires pureeing the one or more fruits or vegetables into an ingredient puree and dehydrating the ingredient puree into a dried ingredient puree by freeze drying the ingredient puree. Thus, the pureeing occurs prior to the freeze drying of the ingredient puree.

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Horigane explicitly teaches away from the claimed steps of pureeing followed by the freeze drying of the ingredient puree. Horigane specifically states as follows:

Freeze-drying may often be practiced after the material to be processed has preliminarily been treated by crushing and homogenization. Such a crushing operation may cause a temperature elevation of the material due to heat evolution upon crushing. The material may suffer from denaturing due to such a temperature elevation in combination with the presence of oxygen, so that the procedures of crushing, homogenization and freezing are not able to realize the preservation of the original quality and condition of the material.

(Col. 1, ll. 31-40.) Horigane further states that an object of its invention is to preserve "the intrinsic quality and properties of the original material without suffering from the denaturing of the material due to the action of oxygen." (Col. 1, ll. 63-67.) This object of Horigane is stated to be achieved by "mixing and crushing a material to be processed, together with dry ice..." (Col. 2, ll. 35-41.) Because Horigane teaches away from the method recited in claim 11, and by dependency claims 13-18, it cannot properly be combined with Johnston. For this same reason, it is respectfully submitted that claims 2-10 are not unpatentable over Johnston in view of Horigane.

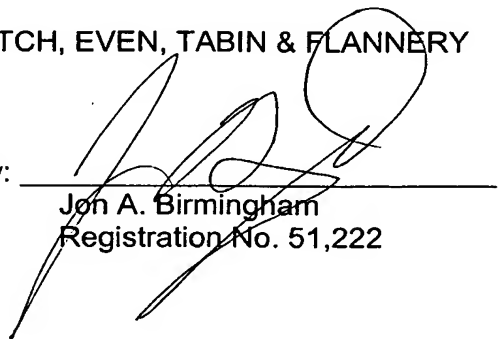
For the reasons set forth above, claims 1, 3-11, 13-19 and 23-30 are believed to be allowable, and reconsideration and allowance of claims 1, 3-11, 13-19 and 23-30 are respectfully requested.

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Please charge any fees required by this amendment to Deposit Account No. 06-1135.

Respectfully submitted,

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